

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DALE B. MORRIS, SR.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-309-RAW
)	
SALLY JEWELL, Secretary of the Interior,)	
)	
Defendant.)	

ORDER

Before the court is the motion of the defendant to dismiss for lack of subject matter jurisdiction. Plaintiff brings this action challenging an agency decision authorizing the taking of certain real property. Defendant moves for dismissal for failure to exhaust administrative remedies. In the plaintiff's response and the defendant's reply, both parties agree to dismissal without prejudice.

Plaintiff previously filed a similar action in this court (14-cv-209-RAW) and a joint stipulation of dismissal without prejudice was entered. The court is aware of Rule 41(a)(1)(B) F.R.Cv.P. and what has been called the "two dismissal rule," which operates to bar a plaintiff from filing the same action a third time on the basis of *res judicata*. This provision does not apply because dismissal for lack of subject-matter jurisdiction is not a decision on the merits. *See Murray v. Conseco, Inc.*, 467 F.3d 602, 605 (7th Cir.2006).

It is the order of the court that the motion of the defendant to dismiss (#9) is hereby granted. This action is dismissed without prejudice for lack of subject matter jurisdiction.

ORDERED THIS 17th DAY OF NOVEMBER, 2015.

Dated this 17th day of November, 2015.

A handwritten signature in cursive script, reading "Ronald A. White", written in black ink over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma